CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

ARLENE AADLAND d/b/a MANOR HEIGHTS MOBILE ESTATES; and MARINER VILLAGE MOBILEHOME PARK LLC d/b/a MARINER VILLAGE MOBILE HOME PARK,	)	**CPSGMHB Case No. 08-3-0003**
	)	***(Mariner Village, et al)***
Petitioners,	)	
v.	)	
	)	**ORDER ON MOTIONS**
SNOHOMISH COUNTY,	)	
Respondent.	)	
and	)	
MARINER VILLAGE HOMEOWNERS' ASSOCIATION	)	
Intervenor	)	

PROCEDURAL BACKGROUND – MOTIONS TO SUPPLEMENT

On July 21, 2008 the Board received "Respondent Snohomish County's Index to Record." The Index lists 54 items by Index number. Some Index numbers contain more than one item.

On August 20, 2008 the Board received "Petitioner Mariner Village's Motion to Supplement the Record." Attached to the motion were three proposed exhibits.

On August 29, 2008 the Board received "Petitioner Mariner Village's Second Motion to Supplement the Record."

Respondent Snohomish County did not respond to the Petitioners' Motions to Supplement.

The Board, having reviewed the above-referenced documents, enters the following ORDER:

ORDER ON MOTIONS TO SUPPLEMENT

Petitioner Mariner Village requests that four items be included in the record, alleging that these items will be of substantial assistance to the Board and/or are the type of information of which the Board may take official notice. Petitioner's First Motion to Supplement is a series of three emails between Walter Olson and Leigh Christianson (Exhibit A), Walter Olson and Mike Stanger (Exhibit B), and Walter Olson and Mike Stanger (Exhibit C). Petitioner's Second Motion to Supplement requests the Board to include as a part of the record the Determination of Non-Significance issued by Snohomish County on August 22, 2008.

RCW 36.70A.290(4) provides:

> The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

This Order will address the Petitioner's Motion to Supplement noted above.

1. Exhibit A is an email from Walter Olson to Leigh Christianson of Snohomish County requesting to be added as a "party of record to the Mobile Home Park Zone Ordinance." Walter Olson gives no indication as to his interest in the Ordinance. Is he a property owner? Does he represent a party related to a property involved in the Ordinance? Is he interested in an issue in the Growth Management Act? What is the purpose for his request? From the email the Board cannot determine why the request is relevant to the issues in the case. Motion to Supplement Exhibit A is **denied.**
2. Exhibit B is an email from Walter Olson to Mike Stanger requesting to be added "to your list of interested parties in manufactured housing community issues." Again the email gives no indication who Mr. Olson represents, whether he holds a particular interest in the Ordinance or has an interest related to the Growth Management Act. Motion to Supplement Exhibit B is **denied**.
3. Exhibit C is an email exchange between Walter Olson and Mike Stanger in which Mr. Olson represents he will be representing Mariner Village "at today's subcommittee hearing." In addition it is clear Mr. Olson will be representing Manor Village at the subcommittee meeting on May 19, 2008, charged with developing a work plan for the public hearing on the Ordinance. With that information, Mr. Olson has an interest in the proceeding and Motion to Supplement Exhibit C is **admitted.**
4. The Second Motion to Supplement by the Petitioners requests the Board to admit the Determination of Non-Significance issued by Snohomish County on August 22, 2008 related to Emergency Ordinance 08-070. The Board **takes official notice** of the action.

The items included in the Record, as discussed *supra* and noted in the summary table below, have been determined to be necessary or may be of substantial assistance to the Board in reaching its decision.

In the summary tables below:

- "Admitted" means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned an Index No.

- Exhibits that indicate "Denied" do not become supplemental exhibits to the Record. No Index number is assigned.

- "Board takes notice" means the Board recognizes the existence of a decision, order statute, ordinance, resolution or document adopted by such instrument.

Proposed Exhibit: Documents	**Ruling**
A. Email dated 02/28/07 from Walt Olson to Leigh Christianson, Snohomish County	***Denied***
B. Email dated 05/13/08 from Walt Olson to John Woodring and Mike Stanger regarding May 19, 2008 Meeting	***Denied***
C. Email dated 05/19/08 from Walt Olson to Mike Stanger	***Admitted as part of the record as Supplement Exhibit 1.***
Determination of Non-Significance Document received August 29, 2008.	***Board takes notice***

ORDER ON MOTIONS TO SUPPLEMENT

The Petitioner's request to supplement the record in regards to Exhibit A and B is **denied.**

The Petitioner's request to supplement the record in regards Exhibit C is **granted.**

The Petitioner's request to supplement the record in regards the Determination of Non-Significance is granted. **Board takes official notice.**

PROCEDURAL BACKGROUND – MOTION TO DISMISS

On June 23, 2008, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Mariner Village Mobile Home Park and Manor Heights Mobile Estates (**Petitioners** or **Mariner Village and Manor Heights**). The matter was assigned CPSGMHB Case No. 08-3-0003 and is hereafter referred to as *Mariner Village et al v. Snohomish County.* Board Member David O. Earling is the Presiding Officer (**PO**) for this matter. Petitioners challenge Snohomish County's Emergency Ordinance No. 08-070. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**).

On July 21, 2008, the Board conducted the PHC at the Board's offices in Seattle. During the PHC the Board requested that the Petitioners better describe the issues they were trying to raise with the Petition for Review. On two occasions the Petitioners resubmitted their issues. Each time the Respondent objected. On July 29, 2008, the Board drafted a Statement of Legal Issues intended to reflect the issues submitted by the Petitioners.

On August 7, 2008, the Board received Snohomish County's Dispositive Motion for Dismissal of Petition for Review with four exhibits. [County Motion]

On August 20, 2008, the Board received Petitioners' Response to County's Dispositive Motion with Six Exhibits and Appendix A. [Petitioners' Response]

On August 20, 2008, the Board received from David C. Tingstad and Arlene Aadland Declarations in Support of Petitioners' Response to County's Dispositive Motion to Dismiss.

On August 27, 2008, the Board received Snohomish County's Reply on Dispositive Motion for Dismissal of Petition for Review. [County Reply]

DISCUSSION AND ANALYSIS

Motion to Dismiss for Lack of Participation Standing

The County moves to dismiss the PFR on the grounds that Petitioners lack standing. County Motion at 8.

Applicable Law

RCW 36.70A.280(2) governs the standing requirements for appearing before the Boards. It provides, in relevant part:

> A petition may be filed only by: . . . *(b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested;…or (d) a person qualified pursuant to RCW 34.05.530 [Administrative Procedures Act – APA]*.

(Emphasis supplied).

In *Wells v. Western Washington Growth Management Hearings Board (**Wells**)*, 100 Wn. App. 657, 999 P.2d 405 (2000), the Court of Appeals clarified that, to establish participation standing under the GMA, a person must show that his or her participation before the jurisdiction was reasonably related to the person's issue as presented to the Board.

The *Wells* holding has been codified in RCW 36.70A.280(4):

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

Positions of the Parties

The County asserts that Petitioners' representatives made no written comments on Emergency Ordinance No. 08-070 prior to the June 16 public hearing, attended but did not speak at that hearing [Ex. 44], and in their comments at the continued hearing of June 25, failed to address any of the legal issues raised in this case [Ex. 54]. County Motion at 8-9. The County argues that *Sno-King Environmental Alliance v. Snohomish County **(Sno-King)***, CPSGMHB Case No. 06-3-0005, Final Decision and Order (July 24, 2006), at 18, requires dismissal for lack of standing where specific GMA legal issues were not raised by a petitioner during the jurisdiction's public process. *Id*.

Petitioners respond, first, that they have APA standing under RCW 36.70A.280(2)(d), supporting their assertion of the requisite interest and injury-in-fact with the affidavits of the owner of Manor Heights and the manager of Mariner Village.[1] Petitioners' Response, at 2-8.

Second, Petitioners assert that their participation in the County's process gives them participation standing under RCW 36.70A.280(2)(b). Petitioners' Response, at 9-13. Petitioners supply:

- An email of May 13, 2008, indicating Walt Olsen's planned attendance on behalf of Manor Heights and Mariner Village at a County subcommittee meeting designed to develop "a work plan for the County Council's June 25 hearing on emergency zoning for manufactured home parks." Supp. Ex. 1.

- A transcript of Walt Olsen's oral testimony at the June 25, 2008 hearing, referencing his prior appearances at County hearings on the predecessor mobile home ordinances. Ex. 54.

- A transcript of Dick Beresford's testimony at the June 25, 2008 hearing representing Mariner Village. Ex. 54.

Third, Petitioners argue that GMA participation standing is not issue-specific. Petitioners' Response at 9-13. Petitioners contend that *Wells* requires only that participation in the jurisdiction's proceedings must have been "reasonably related" to the issues presented to the Board; thus, failure to mention specific GMA violations in comments to the jurisdiction is not fatal. *Citing Laurelhurst Community Club, et al., v. City of Seattle*, CPSGMHB Case No. 03-3-0016, Final Decision and Order (March 3, 2004), at 19.

[1] Declaration of David C.Tingstad [manager, Mariner Village]; Declaration of Arlene Aadland [owner, Manor Heights].

In reply, the County states that the Petitioners "failed to identify any parts of the ordinance that they objected to, and failed to tie any of their comments to the County's comprehensive plan or to the GMA," and therefore their comments in the public process "were not reasonably related to the issues they now raise before the Board." County Reply, at 2, *citing Alpine et al v. Kitsap County (**Alpine**)*, CPSGMHB Case No. 98-3-0032c, Order on Dispositive Motions (Oct. 7, 1998).

Board Discussion

The parties here agree that Petitioners' representatives appeared and testified at the public hearing on the emergency ordinance. County Reply, at 2. The record also suggests that Walt Olsen participated in the County's subcommittee developing a work plan for the ordinance prior to the public hearing. Supp. Ex. 1, Ex. 54 [Public Hearing minutes]. Walt Olsen and Dick Beresford each provided oral testimony. Mr. Beresford was heckled by a hostile audience that had to be admonished by the Council. Ex. 54 [transcribed testimony].[2] While it is obvious from the minutes of the public hearing that Mr. Olson and Mr. Beresford were in a hostile environment, it would have been helpful to the County Council and to the Board if they had better outlined their legal issues in their testimony as they relate to the GMA. Under the circumstances, did Petitioners fail to establish participation standing by failing to articulate some or all of their legal bases for opposing the ordinance?

The Board turns to two Snohomish County cases decided subsequent to *Wells* and its codification in RCW 36.70A.280(4). In *McNaughton v. Snohomish County **(McNaughton)***, CPSGMHB Case No. 06-3-0027, Order on Motions (Oct. 30, 2006), the County and Intervenor CamWest moved to dismiss some or all of McNaughton's legal issues as not having been effectively raised during the County process. The Board said:

> The parties agree that McNaughton participated in Snohomish County's public process for adoption of Ordinances 06-053 and 06-054 [rezoning CamWest property]. McNaughton's attorney submitted a five-page letter on July 17, 2006, followed by an email message and a personal appearance at the County Council's July 19, 2006, public hearing on the Ordinances. The County [and intervenor CamWest] contend[s] that McNaughton never raised [various legal] issues … and these issues must be dismissed….
>
> CamWest's theory is that participation standing is allowed only with respect to legal issues expressly raised by a petitioner during the public process. CamWest parses the text of the July 17, 2006 McNaughton letter to assert that none of the legal issues (except 3 and 5) was effectively presented. McNaughton points to the language of its letter and contends that it contains reference to each of the topics later articulated as legal issues in its PFR.

[2] The Board takes official notice of the "notorious fact" that public hearings concerning the closure or maintenance of mobile home parks are often very contentious. WAC 242-02-670(1)

CamWest mistakes the nature and scope of participation standing. RCW 36.70A.280(2)(b) states that "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested" may file a petition for review of a GMA decision. In 2003, the Legislature amended RCW 36.70A.280 by adding subsection (4) which requires a petitioner to establish standing by showing that his participation before the county or city was reasonably related to his issues presented to the Board. This addition to the statute codified the Court of Appeals decision in *Wells*, *supra*, where the court held that participation standing is not issue-specific: "our conclusion [is] that the Legislature did not intend petitioners to raise specific legal issues during the local government planning process." *Wells*, 100 Wn. App. at 672. The *Wells* court held that a "matter," as intended by RCW 36.70A.280(2)(b), is not the equivalent of an "issue." *Id.* at 671. The court acknowledged that "all three growth management hearings boards have consistently rejected a requirement of issue-specific standing." *Id.* The *Wells* court noted that the 1996 Legislature rejected a proposed amendment that would have required petitioners to raise "issues" rather than "matters" before the local government. The *Wells* court concluded that "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or topic of concern or controversy." *Id.* at 672-3. The court said: "it would be unrealistic given the time and resource constraints inherent in the planning process to require each individual petitioner to demonstrate to the growth management hearings board that he or she raised a specific legal issue before the board can consider it." *Id.* at 674. The enactment of RCW 36.70A.280(4) incorporated the *Wells* holding into the GMA.

Here, during the County's public process, McNaughton clearly indicated its opposition to the two ordinances which amended the Comprehensive Plan to implement the CamWest Settlement Agreement. McNaughton's five-page letter raised concerns about the County's allegedly flawed procedure, special treatment of CamWest outside the docketing process, the likelihood of CamWest's project vesting before updated critical areas regulations, and inconsistency with the County's planning policies. In its participation before the County Council, McNaughton was not required to detail the alleged deficiencies or articulate its legal theories. …

In the present case, the Board finds and concludes that McNaughton's letter, subsequent email, and presence at the County Council hearing on the CamWest Settlement Ordinances put Snohomish County reasonably on notice regarding McNaughton's objections to the process and substance of the ordinances. **Petitioner was not required to frame its legal theories before the County Council in order to preserve the right to challenge compliance with various provisions of the GMA in its PFR**.

McNaughton, Order on Motions, at 8-9, 11 (citations and references to the record deleted; emphasis added).

The Board addressed a similar issue in *Hensley v. Snohomish County (**Hensley VI**)*, CPSGMHB Case No. 03-3-0009c, Order on Motions (May 19, 2003). During Snohomish County's consideration of the Verbarendse amendment, Ms. Hensley testified that the amendment failed to comply with certain GMA requirements concerning LAMIRDs [RCW 36.70A.070(5)]. Ms. Hensley's subsequent petition for review to the Board also charged that, in addition to non-compliance with the LAMIRD criteria, the Verbarendse amendment did not comply with other provisions of the GMA. The County (and Verbarendse as Intervenor) moved to dismiss all Ms. Hensley's legal issues other than the LAMIRD question for lack of participation standing. The Board ruled in favor of Ms. Hensley. The Board said:

> Simply stated, the issue before the Board is whether by raising concerns about the Verbarendse amendment before the County Council, Petitioner Hensley established, in her own right, GMA participation standing to challenge that amendment for compliance with provisions of the GMA other than RCW 36.70A.070(5). In other words, were Hensley's concerns with the Verbarendse amendment reasonably related to the GMA noncompliance issues presented to the Board? The Board concludes they were.
>
> Neither the County nor Verbarendse dispute that Hensley voiced her opposition to the Verbarendse amendment before the County Council. In the Board's *Alpine* decision[3] the Board stated,
>
> > "To have meaningful public participation and avoid 'blind-siding' local governments, members of the public must explain their land use planning concern to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA."
>
> *Alpine*, at 7-8.
>
> Here, when Hensley's appeal was filed, the County was not "blind-sided." It is undisputed that the County was clearly on notice and aware that Hensley had concerns and opposed the Verbarendse amendment before it acted. The County, acting within its authority, nonetheless adopted the amendment. **Further, the County was not "blind-sided" to the fact that the GMA requires Plan amendments to be: guided by the goals of the Act; internally consistent with other elements; consistent with the CPPs; and conduct its planning activities consistently with its Plan. These GMA requirements apply to each and every amendment a jurisdiction chooses to adopt.** These requirements were not new to the County. The Board concludes that Petitioner Hensley, by voicing her concerns regarding the Verbarendse amendment, satisfied the GMA

[3] *Alpine v. Kitsap County* (***Alpine***), CPSGMHB Case No. 98-3-0032c coordinated with 95-3-0039c, Order on Dispositive Motions, (Oct. 7, 1998).

> participation standing requirement. Hensley's opposition to the Verbarendse amendment before the County Council is reasonably related to the challenges presented to the Board.

Hensley VI, Order on Motions, at 11-12 (emphasis added).

In the present case, Petitioners' representatives would have been well-advised to have submitted written testimony, and to have documented their particular involvement in the sub-committee process. Their transcribed remarks at the hearing were conciliatory rather than spelling out their opposition to the ordinance with precision.[4] Nevertheless, the Board reads the transcribed statements as establishing clear opposition to the emergency ordinance because of its impact on property owners in the context of the provision of varied and affordable housing. The County was not "blind-sided" by Petitioners' appeal of the ordinance; nor was it "blind-sided" to the fact that the GMA requires development regulations to be consistent with and implement its comprehensive plan (Legal Issues 2, 3, 4, and 5) and to be guided by the goals of the GMA (Legal Issues 2, 3, 5, and 6).

The Board could proceed to analyze each legal issue individually to determine which, if any, of them might be beyond the scope of the objections raised by the Petitioners in the public process. Legal Issue 1 challenging compliance with RCW 36.70A.390 is clearly permissible. Legal Issues 2 and 4 concern availability of a "broad range of housing types" and "fair-share-housing allocations." These legal issues allege consistency with the comprehensive plan and GMA goals and appear to be within the range of Petitioners' public participation. Legal Issue 3 (Urban Density) and 5 (Economic Development) appear to be beyond the scope of the record of Petitioners' participation. Invalidity (Legal Issue 6) is treated by this Board as a remedy. Further discussion and an issue-by-issue ruling is unnecessary in light of the disposition of this case which follows.

Conclusion re: Participation Standing

The Board finds and concludes that the Petitioners have participation standing to challenge the emergency ordinance as to process (Legal Issue 1) and housing (Legal Issue 2 and 4). The County's motion to dismiss Petitioners for lack of GMA standing is **denied**.

Motion to Dismiss Petition for Review

The County moves to dismiss Petitioners' challenge to Emergency Ordinance No. 08-070, which imposes interim zoning controls on mobile home parks in the County's urban areas, arguing the Board should limit its review of temporary/interim ordinances to only determine compliance with the procedural requirements of RCW 36.70A.390.[5]

[4] For example, Walt Olsen defends his clients against the charge of making their money off the backs of the poor. Ex. 54 [hearing transcript]. Both Walt Olson and Dick Beresford spent most of their allotted two minutes explaining the closure or condominium-conversation of Manor Heights and Mariner Village. *Id*

[5] County Motion, at 3-6.

The County relies upon this Board's prior decision in *SHAG v. City of Lynnwood* (***SHAG***), CPSGMHB Case No. 01-3-0014, Order on Motions, (Aug. 3, 2001), where the Board stated, at 4:

> [RCW 36.70A.390] is unique in the GMA context; it is a blunt instrument within the statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur.[6]

In the *SHAG* matter the Board limited its review to determining whether the challenged Ordinance complied with the procedural requirements of .390 and noted, at 10:

> The Board agrees that adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in .120.
>
> However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the status quo while perceived concerns with existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to buy time to enable the jurisdiction to undertake that very "planning activity" *i.e.*, developing and implementing long-term, permanent policies and regulations.[7]

In response Petitioners assert, "Emergency ordinances adopted under RCW 36.70A.390 are development regulations subject to consistency review."[8] To support their position, Petitioners cite to *Master Builders Association of King and Snohomish Counties v. City of Sammamish* (***MBA/Camwest***), CPSGMHB Case No. 05-3-0027, Final Decision and Order, (Aug. 4, 2005) and *Department of Corrections v. City of Lakewood* (***DOC III/IV***), CPSGMHB Consolidated Case No. 05-3-0043c, Final Decision and Order, (Jan. 31, 2006), where the Board reviewed interim measures and moratoria for compliance with the Act.[9] Petitioners further contend that the County's position is in error because of the potential for abuse, especially since .390 allows for the renewal of interim measures – "A jurisdiction could keep renewing an interim ordinance under .390 and under the County's theory, could avoid any scrutiny of those adoptions."[10] In fact, Petitioners claim that since the County has not argued that the challenge would be moot by the time a decision was rendered,[11] this signals the County's intention to renew this interim ordinance.[12] Citing to this Board's decision in *Clark v. City of Covington* (***Clark***), CPSGMHB Case

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[6] *Id*.
[7] *Id*.
[8] Petitioners' Response, at 14.
[9] *Id*. at 15.
[10] *Id*. at 17.
[11] Interim ordinances are typically in effect for six months. If appealed, the challenge occurs after adoption and the six-month interim measure can lapse before the Board renders a decision or even holds the hearing on the merits. Thus, the Board is mindful of the question of mootness.
[12] *Id*. at 29.

No. 02-3-0005, Final Decision and Order, (Sep. 22, 2002), Petitioners urge the Board to at least retain jurisdiction over the ordinance until it is clear whether or not the County will renew the challenged enactment.[13]

In reply, the County reiterates its position urging the Board to review this interim ordinance only for procedural compliance with .390 and then to dismiss the matter since the County asserts it has adhered to the provisions of the statute.[14] The County distinguishes the Board cases cited by Petitioner and argues the Board's reasoning in *SHAG* is applicable.[15] To support this contention the County points to this Board's decision in *Phoenix Development LLC, et al., v. City of Woodinville* (***Phoenix***), CPSGMHB Consolidated Case No. 07-3-0029c, Final Decision and Order, (Oct. 12, 2007) where the Board stated, at 21-22 (emphasis in original):

> [The Board notes numerous cases where it has been called upon to review interim ordinances or moratoria.] What can be gleaned from a review of these cases are three general observations: 1) The Board will review challenged local government enactments of moratoria and interim measures for compliance with the *procedural* requirements of RCW 36.70A.390; 2) If a moratorium, interim measure, or combination of such actions, is systematically and continuously extended for a significant period of time, to the extent that the measure takes on the attributes of a "permanent" regulation, the Board may exercise its jurisdiction to review the substantive provisions of the enactment with the goals and requirements of the GMA; and 3) A blatant violation of a GMA requirement (i.e. preclusion of the siting of an Essential Public Facility). In other words, **the Board has authority and subject matter jurisdiction to review moratoria, interim measures, or interim regulations.** Nothing in the present case dissuades the Board from concluding otherwise.[16]

The Board continues to adhere to the principles laid out in the *Phoenix* matter noted *supra*. Emergency Ordinance No. 08-070 does not involve an essential public facility, nor is it an interim regulation that has been systematically and continuously extended for a significant period of time.

The Board notes that in the *Clark* case, relied on by Petitioners, the Board addressed the notice and public participation issues raised in conjunction with the adoption of the challenged *emergency* ordinance, but declined to address the consistency challenge, stating:

> The City of Covington, to this date, has not adopted a complete and final Comprehensive Plan because it does not have a permanent Future Land

[13] *Id*. at 21-22.
[14] County Reply, at 1.
[15] *Id*. at 7-15.
[16] *Id*. at 16-17.

> Use Map (**FLUM**) in place. Until such time as the City has a permanent, final, and complete Comprehensive Plan accompanied by a permanent FLUM, the Board will not examine these documents for consistency or for compliance with the goals of the GMA.[17]

Since no notice or public participation issues are posed in the present case,[18] the Board declines the invitation to continue jurisdiction over this case. Therefore, **the Board declines to review the challenged action for compliance with the goals and requirements of the Act at this time**. The time for such review, if timely challenged, is when the County adopts a *permanent regulation* addressing the subject matter of this Ordinance – mobile/manufactured home parks.

However, compliance with the provisions of RCW 36.70A.390 are framed as a Legal Issue (Legal Issue 1) in this matter, as they were in *SHAG*, and the Board will review Emergency Ordinance No. 08-070 for compliance with the procedural requirements of .390.

The Procedural Requirements of RCW 36.70A.390

RCW 36.70A.390 provides, in relevant part:

> A county or city that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing.

Here, the County adopted Emergency Ordinance No. 08-070 on April 23, 2008 before holding a public hearing.[19] The Emergency Ordinance set June 25, 2008 as the date for the public hearing.[20] However, the June 25, 2008 public hearing date fell beyond the sixty day requirement of .390 and the County published a new notice setting June 16, 2008 as the date for the public hearing on the matter.[21] The County initiated the public hearing on that day,[22] and continued the public hearing until June 25, 2008 to allow for additional public testimony.[23] Petitioner asserts the public hearing was not closed until the second hearing which is beyond the sixty-day window required by .390.[24]

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[17] *Clark*, FDO, at 19.
[18] *See* August 6, 2008 Corrected Prehearing Order, at 7-8.
[19] *See* Ex. 32, Emergency Ordinance No. 08-070, Section 4, at 16; and County Motion, at 6-7.
[20] *Id*.
[21] County Motion, at 7; and Ex. 44.
[22] *Id*.; and Ex. 53.
[23] Petitioners Response, at 24.
[24] *Id*.

Emergency Ordinance No. 08-070 contains findings of fact purportedly justifying the County's action.[25] Petitioner claims these findings do not justify the County's action since the County has been working on the question of mobile home park zoning for years without resorting to emergency or interim measures.[26]

The Board is not persuaded that the County's two-day hearing runs afoul of .390. The June 16, 2008 public hearing was unquestionably within the sixty-day window requirement of .390. The fact that the County continued the public hearing to a date certain to allow for additional testimony,[27] does not conflict with .390. Further, the findings in the Emergency Ordinance adequately explain the relationship of low-income/affordable housing concerns in the context of the mobile/manufactured home parks. These are important issues that the County, the owners, and residents need to address together. The Board trusts that the parties will use the time of the Emergency Interim Ordinance productively.

Conclusion

The Board finds and concludes that Snohomish County Ordinance No. 08-070 is only reviewable for compliance with the procedural requirements of RCW 36.70A.390. The Board concludes that the County's process complies with RCW 36.70A.390 and the motion to dismiss is **granted.**

ORDER ON MOTION TO DISMISS

WAC 242-02-720 provides:

> Any action may be dismissed by a board:
>
> (2) Upon motion of the petitioner or respondent prior to the presentation of the the respondent's case…

The Board finds and concludes the Respondents have moved to dismiss this action. The motion is timely and Snohomish County has not yet presented its case.

In the matter of the County's Motion to Dismiss for lack of participation standing, the County's Motion is **denied.**

In the matter of the County's Motion to Dismiss based upon satisfactory execution of the procedural requirements of RCW 36.70A.390, and the interim nature of the Emergency Ordinance, the County's Motion is **granted.**

[25] *Id.*; and Ex. 32, *see* WHEREAS clauses and Section 1, at 1-3.
[26] Petitioners' Response, at 23-24.
[27] The Board notes that Petitioners attended the June 16, 2008 public hearing but did not provide testimony until the June 25, 2008 public hearing. See Ex. 54. The Board has already concluded that Petitioners' standing is based on their June 25 testimony.

ORDER

Based upon motion of the Respondent, the Board's Rules of Practice and Procedure, the GMA and prior case law, the Board ORDERS:

1) The Petition for Review in *Mariner Village et al v. Snohomish County* is **dismissed.**

2) CPSGMHB Case No. 08-3-0003 is **closed.**

So ORDERED this 3rd day of September, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
David O. Earling
Presiding Officer

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832. [28]

[28] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)